REMARKS/ARGUMENTS

The Examiner is requiring election of a single Group of claims for further prosecution. The Claims have been divided into Groups as follows:

Group I: Claims 1-6, 37 and 45, drawn to a method for identifying ligands or aptamers specific for a membrane receptor protein-tyrosine kinase (RPTK), expressed in an activated or nonactivated form, by cells, using a mixture of nucleic acids.

Group II: Claims 7-11, 31, 32, 38-39 and 42, drawn to an aptamer, wherein said aptamer is specific for cells expressing a receptor protein-tyrosine kinase (RPTK) in an activated or nonactivated form.

Group III: Claims 12-15, 40-41 and 44, drawn to an aptamer, wherein said aptamer has formula I: R1-R-R2.

Group IV: Claims 12, 16-22 and 43, drawn to an aptamer wherein said aptamer has formula II (SEQ ID NO: 34).

Group V: Claims 12 and 23-27, drawn to a reagent for diagnosing a tumor, wherein said reagent comprises an aptamer.

Group VI: Claim 7 and 28-30, drawn to medicament (inhibitor), comprising an aptamer, which has both an ability to bind to an RPTK receptor and an inhibitory action with respect to said receptor in an activated form.

Group VII: Claims 33-36, drawn to a method for screening products which interact with an RPTK receptor or targets which form a complex with said RPTK in an activated or nonactivated form.

In addition, the Examiner is requiring an election of species as follows:

If Group I is elected, Applicants are further required to elect one species from 1, one from 2 and one from 3 as follows:

1) Ligands or aptamers as recited in e.g., claim 1.

2) Biological activity as recited in e.g., claim 6.

3) Receptor protein-tyrosine kinase as recited in e.g., claim 8.

For Groups II-VI:

1. A single Seq ID. No. sequence for an aptamer.

For Group VII:

1. Mutant or non-mutant of receptor protein-tyrosine kinase. (Please see the RPTK species as recited in e.g., claim 8.) If a mutated one is selected, please specify the mutation as recited in e.g., claim 34 i.e., a single location mutation for cys.

Applicants elect, with traverse, Group I, Claims 1-6, 37 and 45, (drawn to a method for identifying ligands or aptamers specific for a membrane receptor protein-tyrosine kinase (RPTK), expressed in an activated or nonactivated form, by cells, using a mixture of nucleic acids), for examination.

Applicants also provisionally elect, for examination purposes only, the following species:

1) aptamers (at least claim 1 readable thereon);
2) biological activity: reversion of the phenotype associated with activation of the RPTK (at least claim 6 readable thereon);
3) receptor protein-tyrosine kinase: RET receptor (at least claim 8 readable thereon).

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I - VII do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

> "Groups (I and VII) lack the corresponding special technical features of groups (II-VI) as evidenced from the various prior art cited by applicants et e.g., page 5 of the instant specification.
>
> Groups II-VI lack corresponding special technical features of each of the compounds in each group as containing various structure, possibly function and

mode of action. For examples, Group V drawn to a reagent special technical features of diagnosing tumor lack the corresponding features of group VI as inhibitory drug or medicament albeit the main component e.g., aptamer may or may not be the same.

The special technical features of group I of identifying ligands or aptamers specific for a membrane receptor protein-tyrosine kinase (RPTK), expressed in an actvated or nonactivated form, by cells, using a mixture of nucleic acids which is lacking in the screening method of group VII inhibitory action of the product being screened."

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

"The expression "special technical features" is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any)."

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims *interpreted in light of the description* was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Furthermore, 37 C.F.R. § 1.475(b) states in pertinent part:

"An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:
(2) A product and a process of use of said product;. . ."

In addition, The MPEP §806.03 states:

"Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction there between should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition."

Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I-VII with respect to 37 C.F.R. § 1.475(b)(2) and MPEP §806.03. Therefore the burden necessary according to MPEP § 1893.03(d) to sustain the conclusion that the groups lack of unity of invention has not been met.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP § 808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only. Applicants respectfully request that the election requirement be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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